S.B. Civil Writ Petition NO.601/2005

Rustam Khan

vs

Addl. District Judge & Ors.

DATE OF ORDER : - 12.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.Rajesh Joshi on behalf of Mr.Sachin Acharya, for the petitioner.
Mr.PM Vyas, for the respondent

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 2nd Dec., 2004 by which petitioner's right to submit written statement was closed by the trial court and, thereafter, when petitioner submitted an application under Section 148 CPC alongwith written statement on 6th Nov., 2004, was rejected.

According to learned counsel for the petitioner, the petitioner could not submit the written statement because of the fact that the petitioner's wife met with accident and she remained admitted in hospital from 6th Sept., 2004 to 22nd Sept., 2004. According to petitioner, there is a delay of only 20 days beyond 90 days. According to learned

counsel for the petitioner, if the petitioner's right to file written statement will be taken away then inevitable result will be the decree against the petitioner. In these facts and circumstances, a lenient view may be taken and delay in filing the written statement may be condoned.

Learned counsel for the plaintiff-respondent vehemently submitted that there is a total lack of bonafide on the part of the petitioner-defendant and,therefore, the delay could not be condoned and the court below has not committed any illegality in not extending the period for filing the written statement by order dated 2nd Dec., 2004. Learned counsel for the plaintiff-respondent further vehemently submitted that even in view of the fact as stated by the petitioner, his wife was in hospital from 6th Sept., 2004 to 22nd Sept., 2004 whereas the petitioner's right to file the written statement was closed by the trial court on 10th Oct., 2004, i.e., after the discharge of the petitioner's wife from the hospital. Therefore also, there is no question of granting more time to the petitioner-defendant.

I considered the submissions of learned counsel for the parties and perused the facts of the case and the reasons given by the trial court in its order dated 2nd Dec., 2004. The petitioner's wife met with accident and remained in hospital from 6th Sept., 2004 and she was

discharged from the hospital on 22nd Sept., 2004. The right to file written statement was closed by the trial court on 10th Oct., 2004. It is true that there is a difference of few days in discharge of the petitioner's wife from the hospital and closure of the petitioner's right to file the written statement, but at the same time, this argument of learned counsel for the plaintiff-respondent cannot be appreciated that on the day when the petitioner's wife was discharged all things became normal so as to leave no ground for the petitioner-defendant to keep himself busy for his wife. The petitioner's wife was not an old sick for which the petitioner might have adjusted, but it was a sudden accident resulting into confinement of petitioner's wife in hospital for about 16 days and that period cannot be treated to be a short period that this ground can be treated to be a ground created by the petitioner-defendant to avoid filling of the written statement.

In view of the above, there are good reasons for extension of the time for filing the written statement upto the period by which petitioner submitted the written statement.

Hence, the writ petition of the petitioner is allowed. The order dated 2nd Dec., 2004 is set aside and the written statement already filed by the petitioner on 6th Nov., 2004 is taken on record subject to payment of cost of Rs.1,000/- to the plaintiff within a period of 15 days

from today or same may be deposited before the trial court. The stay order granted by this court on 29.1.2005 became infructuous. Hence, the stay petition is dismissed.

(Prakash Tatia), J.

c.p.goyal/-